

BILL ANALYSIS

Senate Research Center

H.B. 515
By: Dunnam (Sibley)
Jurisprudence
4-18-97
Engrossed

DIGEST

Currently, Article 1.13(c), Code of Criminal Procedure, states that an attorney must be appointed for an individual to waive a jury trial. Some judges are following the provision, as written, and appointing attorneys in non-indigent cases for what would have otherwise been pro-se defendants. Such districts pay for the attorneys to be appointed for the limited service of waiving a jury trial. Some judges are not following the literal wording of the provision by not appointing attorneys to waive the jury trial. The convictions in these districts may be void due to the way the provision is currently stated. This bill would amend Article 1.13, Code of Criminal Procedure, to allow defendants charged with misdemeanors to waive a jury trial without first having an attorney; to specify that only those defendants charged with a felony are required to have an attorney to waive a jury trial; and, additionally, to deny the state's right to a jury trial in misdemeanor cases.

PURPOSE

As proposed, H.B. 515 allows defendants charged with misdemeanors to waive a jury trial without first having an attorney; specifies that only those defendants charged with a felony are required to have an attorney to waive a jury trial; and denies the state's right to a jury trial in misdemeanor cases.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 1.13(a), Code of Criminal Procedure, to require the defendant in a criminal prosecution for any offense other than a capital felony case in which the state notifies the court and the defendant that it will seek the death penalty to have the right, upon entering a plea, to waive the right of trial by jury, conditioned, however, that such waiver must be made in person by the defendant in writing in open court with the consent and approval of the court, and if the offense is a felony, with the consent and approval of the attorney representing the state. Requires the consent and approval by the court to be entered of record on the minutes of the court, and the consent and approval of the attorney representing the state, if required by this subsection, shall be in writing, signed, and filed in the papers of the cause before the defendant enters a plea.

SECTION 2. Amends Article 1.13(c), Code of Criminal Procedure, to authorize a defendant to agree to waive a jury trial regardless of whether the defendant is represented by an attorney at the time of making the waiver, but before a defendant charged with a felony who has no attorney can agree to waive the jury, the court must appoint an attorney to represent the defendant.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 1997.

SECTION 5. Emergency clause.